

Town of Scituate

Shellfish Aquaculture ~~License Grant~~ Regulations

“License Grant Program”

1.0 Prologue

The Town of Scituate (“Town”) advocates the orderly development of private aquaculture that is complementary to the continuing development of the Town's shellfishery. In support of this goal, the Town may issue Shellfish Aquaculture ~~Licenses Grants~~ (the “~~L~~icense” or “~~L~~icenses”). Such ~~L~~icenses shall be issued by the Town Board of Selectmen (the “~~L~~icensing ~~A~~uthority” or “~~B~~OS”). These Regulations govern licenses issued for the exclusive use of a designated area for aquaculture and do not govern permitting for general commercial or recreational shellfish harvesting.

In determining whether to grant a license, the Town ~~shallis obligated to~~ protect and preserve ~~the~~ existing fisheries and ~~to~~ minimize the impact on other uses of the marine environment. The right of public navigation through a license area shall not be infringed upon except in areas containing ~~approved~~ structures that are approved and properly marked according to these Regulations.

2.0 Definitions

For the purposes of these Regulations, unless the context otherwise requires, the following words shall have the following meanings:

Aquaculture – the rearing of aquatic animals for food or the cultivation of aquatic plants for food.

Downweller- ~~Aa~~ shellfish nursery system where water flows down through the seed, pressing it against a screen. A Downweller is capable of handling seed otherwise too small for an upweller system (see Upweller).

Gear- included but not limited to seed, any equipment used to house seed, vehicles including boats, trucks and refrigerated containers, coolers, ice and fuel. Costs associated with labor are not included.

License Area – the area shown on the ~~L~~icensee’s plan submitted with the application to the extent the area was approved by the Town for the license, including but not limited to the Exclusive Use Area.

Licensing Authority- Town of Scituate Board of Selectmen (~~BOS~~).

Resident of the Town of Scituate– Any person who maintains a bona fide domicile in the Town of Scituate for at least twelve (12) consecutive months prior to the date of any application made hereunder, as described further in Section 4.3 below.

Scituate Oyster- the marketing name for all oysters harvested from Scituate waters. For example, Scituate Oyster by XYZ Oyster Company.

Shellfish – includes clams, conchs, limpets, mussels, oysters, periwinkles, quahogs, razor clams, scallops, sea clams, sea quahogs, sea scallops and winkles, in accordance with M.G.L. [c.Chapter 130, § 1](#).

Shellfish Harvesting – includes all the activities of the digging or taking of shellfish, sea worms, or eels up to and including the landing of same, pursuant to M.G.L. [c.Chapter 130, §§ 52 and 100D](#).

Upweller- A secondary nursery system where water continually flows upward. The upward force of the water levitates the shellfish allowing more access to food.

3.0 Authority

- a) The following Regulations concerning shellfish aquaculture licenses are adopted pursuant to M.G.L. [c.Chapter 130, §57](#). Violation of any of the requirements in these Regulations subjects the holder of a license (“[L](#)icensee”) to review and possible revocation of a license at the discretion of the licensing authority.
- b) The [L](#)icensing [A](#)uthority reserves the right to review or amend the [LicenseGrant](#) Program and to amend these Regulations at any time. Any such amendment(s) [shall](#) apply to all [L](#)icenses, unless stated otherwise in the amendment(s).
- c) If any of these Regulations is declared invalid by any court or tribunal or competent jurisdiction, the remaining provisions of these Regulations shall not be affected.

4.0 Application

The licensing authority ~~shall~~[will](#) consider applications for [L](#)icenses based on merit, within the limitations of available land, water space and site access. All [license](#) applications ~~for a license shall~~ be submitted, with the proper fees, to the ~~BO~~[Board of Selectmen’s](#) Office for review, ~~by the licensing authority.~~ [A License shall be valid for an initial two yer period. Licenses may be renewed in accordance with the terms of these regulations. For any renewal, the licensee need not file a full new application, but only an application for renewal.](#)

4.2 Fees

- a) There shall be a non-refundable **Application Fee of three hundred dollars (\$300.00)**.
- b) Once a license has been granted, an **Annual Administrative Fee** ~~shall~~[will](#) be due in the amount of **twenty-five dollars (\$25.00) per acre, or part thereof**, covered by the [L](#)icense. If the fee is not paid within six (6) months of becoming due, the [L](#)icense shall be forfeited pursuant to M.G.L. [c.Chapter 130, § 64](#).

c) Once a License has been granted, an **Annual Reporting Fee** ~~shall will~~ be **due** in the amount of **One Thousand dollars (\$1,000)** ~~per-per~~ License grant.

e)d) Once a License has been granted, an **Annual Inspection Fee** ~~shall will~~ be **due** at the time of inspection in the amount of **Two Hundred dollars (\$200)** per license grant.

4.3 Application Process

- a) The completed application shall be submitted to the Scituate Shellfish Advisory Committee Email address (Shellfish@ScituateMA.gov) or hand delivered to the BOS office c/o Shellfish Advisory Committee.
- b) The Application shall be on forms provided by the Shellfish Advisory Committee and approved by the BOS, and shall include:
 1. A site plan including the latitude and longitude of corners and a map of the proposed area to be covered by the license. The map shall describe the proposed licensed area, including the waters, flats, or creeks sought to be covered.
 2. Town of Scituate Commercial Shellfish License Grant Application.
 3. ~~If private land is proposed, T~~he Applicant ~~shall must~~ demonstrate, ~~on the application,~~ that the Applicant has the right to access and use the land that is the subject of the Application. The Application ~~shall must~~ include a specific analysis of the land that will be subject to the License, including the limits of that land (extreme low water line, mean low water line, etc.), ~~and~~ the rights of the Applicant to use that land ~~are available to the licensee~~. The Applicant shall include a copy of the deed or other suitable proof of ownership or other authorization.
- c) No License shall cover an area greater than three (3) acres. Acres do not need to be contiguous.
- d) All applications and attachments submitted to the Town shall become the property of the Town of Scituate upon submission.
- e) The Shellfish Advisory Committee shall review the Application package for completeness and shall notify the ~~a~~Applicant if any portion of the application is missing or deficient.

4.4 Notice of a Public Hearing

- a) Following receipt of a completed Application, the Licensing Authority shall establish a public hearing date. Pursuant to M.G.L. c. 130 Section 60, no license shall be granted, transferred, amended, or renewed until after a public hearing, due notice of which has been posted in three (3) or more public places, and published in a newspaper, if any, in

the town where the territory described in the application is located. Both posting and publication shall be done at least ten (10) days before the time fixed for the hearing, stating the name and residence of the applicant and, in the case of a transfer, the transferee, the date of the application, and the location, area, and description of the proposed or currently licensed area.

- b) The Licensing aAuthority shall notify the Applicant at least fourteen (14) days prior to the public hearing of the time, date, and place of the hearing.
- c) The Applicant ~~shall~~will be required to provide notice of the hearing to all abutters to the license area (as certified by the assessor's office) and all ~~other~~ licensees within five hundred (500') feet of any point along the perimeter of the requested licensed area by certified mail, return receipt requested. The notice to abutters and licensees must be made at least ten (10) days prior to the public hearing date. The U.S. Postal Service Receipt for Certified Mail for each notice shall be submitted to the Licensing Authority at or before the time of the hearing.

4.5 Application Review and License Granting

- a) Upon validating that an Application is complete, the Shellfish Advisory Committee shall review and comment on an applications. In approving or denying the Application, the Licensing Authority may consider, but is not bound by, comments from the Shellfish Advisory Committee
- b) Licenses shall be granted, renewed, amended, transferred, or denied by the Licensing aAuthority in a written decision issued within sixty (60) days after receipt of the complete written Application, unless an extension is granted by written agreement of the Applicant.
- c) If, during the review process, the sShellfish aAdvisory eCommittee or the Licensing Authority determines that it needs additional information in order to properly review the aApplication, the Shellfish Advisory Committee or Hicensing aAuthority may request such additional information from the Applicant and may request that the Applicant agree to extend the hearing time so that the additional information can be generated and considered. The Applicant shall provide additional information and agree to this request or the Application shall be denied.
- d) At the option of the Licensing Authority, the applicant may be required to pay for the legal and technical fees incurred by the Licensing Authority to review any Applications, including one for renewal, amendment, or transfer.
- e) After review of the Application and a public hearing, the Hicensing aAuthority may grant, renew, amend, or transfer a license, with or without conditions, or the Licensing Authority may deny the Application.

- f) In reviewing an Application for a new or amended license, or for license renewal or transfer, the licensing authority may grant the Application only if the applicant demonstrates the following:
1. The shellfish aquaculture plan proposed by the applicant meets all the requirements of these Regulations and the provisions of M.G.L. c.Chapter 130;
 2. The plan proposed by the applicant is designed to cause no substantial adverse effect on ~~the~~ shellfish or other natural resources of the Town and proposes a benefit to the Town;
 3. The issuance of a License will not impair the private rights of any person; and
 4. The issuance of a license will not materially conflict with the purposes of these LRegulations to protect and preserve the existing fisheries and minimize impact on other uses of the marine environment.
- g) Licenses ~~shall will~~ only be issued for land more than one hundred and fifty (150') feet from the mean high-water line. This requirement, however, ~~shall is~~ not ~~applyieable~~ in areas that are separated from the shoreline or mean high water line by guzzles or channels containing water at mean low water.
- h) No License shall permit a licensee to impair or to materially obstruct navigational waters.
- i) The License, if issued, shall describe the latitude and longitude of corners of the waters, flats, or creeks covered by the license.
- j) All licensing decisions by the Licensing authority are final.
- ~~k) When the licensing authority has approved a new license or the renewal, amendment, or transfer of a license, the authority may request an inspection and certification of the licensed area by the Division of Marine Fisheries ("DMF") that the granting of a license and operation thereunder will cause no adverse harm on the shellfish or other natural resources of the Town. Failure to obtain a DMF certification for a new license within one year of approval of the license will cause the approval to be revoked. Although approval for a license may be given without such a certification, the license itself shall not be issued until such certification is received.~~
- ~~k)~~ Within one year of approval of the License, the Applicant ~~shall must also~~ complete the application review process as required by any applicable federal and state authorities, or the license approval will be revoked. Upon request, the licensing authority may extend the time period for this review. However, in no case shall a license be granted for any areas which are at the time of inspection, or which were within two years prior thereto, closed for municipal cultivation under provisions of M.G.L. c.Chapter 130, §Section 54.

~~m)l) _____ The granting of a license does not relieve the applicant from obtaining any other necessary licenses, approvals, and/or permits prior to conducting operations, including, but not limited to such permits or licenses from the U.S. Army Corps of Engineers, Massachusetts Department of Environmental Protection, or any division of the same, or the Town's Conservation Commission, Board of Appeals, or Planning Board, all as may be applicable. Prior to operation, the Applicant will be required to have the licensed area surveyed by a registered engineer or a registered surveyor. A recorded plan defining the boundaries of a license area, together with a full specific description of the licensed area shall be submitted to the Harbormaster before the issuance of the License. Upon completion of the plan, the Applicant shall have the boundaries marked as prescribed by these Regulations.~~

~~n)m) _____ The granting of a License shall be conditional upon obtaining all licenses, approvals, and/or permits: required from all federal, State and local authorities. All licenses, approvals, and/or permits required to use a license shall be appended to a License and filed with the Board of Selectmen's Office at the time of issuance of the License.~~

~~o)n) _____ Licenses pursuant to this Paragraph shall be subject to any rules and regulations promulgated by the DMF, including those concerning the use and scope of predator controls in the intertidal zone. The Licensing Authority may condition the grant of a license on compliance with any conditions that another authority DMF deems necessary and appropriate for a given location or operation, including species to be propagated and the source and movement of seed shellfish.~~

4.6 Application Eligibility Requirements

- a) Licenses shall only be issued to domiciled residents of the Town of Scituate who are eighteen (18) years or older.
- b) All local tax obligations must be paid in full.
- c) Applicants can prove to the satisfaction of the Licensing Authority that they are bona fide domiciled residents of the Town and have been domiciled within the Town for at least twelve (12) consecutive months prior to the date of application.
- d) Written proof of residency is required. Such written proof may include address of residence, the time during which the Applicant has resided at said address, and evidence of ownership or lease of said residence. Applicant may also be required to provide evidence of the location of automobile registration, address contained on the driver's license, and other relevant proof that Scituate is the domicile of the applicant. The Licensing Authority reserves the right to waive the residency requirement.
- e) Proof of insurance shall be submitted to the Shellfish Advisory Committee prior to engaging in any aquaculture activity on the site.

- f) Applicants shall disclose all Licensegrant holders in Scituate with whom the aApplicant has business or family relationships.
- g) A licensed area shall be forfeited if the licensee ceases to be a resident or otherwise ceases to comply with these Regulations. The licensing authority shall review the residency of each license holder whenever the License is presented for approval, review, or renewal.

4.7 Renewal of Aquaculture Licenses

- a) The initial term of a license shall be two (2) years from date of final issuance.
- b) Provided appropriate effort has been demonstrated, as required in Section 6.0 through Section 6.2, the first renewal of a license shall be for five (5) years from date of issuance of the renewal.
- c) Renewals may be requested and acted upon only during the twenty-four (24) months immediately prior to the expiration date of the current License. The renewal period shall begin on the expiration date of the existing License.

5.0 LicenseGrant Limitations

The Licensing Authority considers aquaculture space a limited resource with limited availability and there is a need to regulate and protect aquaculture space throughout regulation. The licensing authority imposes grant limitations in order to adequately manage a limited resource.

5.1 Limit on Individuals who can use One LicenseLicensed to Use a Grant

- a) Licenses may be issued to up to two (2) individuals, 18 years of age or older, meeting the requirements set forth in 4.6.
- b) The Licensing aAuthority will not recognize more than two (2) individuals as Licensees on any one License.
- c) Each person who is licensed to use an area for aquaculture must acknowledge and approve the addition of any person who subsequently applies to be included in that License.

5.2 UseWorking of LicenseGrants by Non-Licensees

- a) All individuals authorized by a Licensed grant holder to work under the License~~the grant~~ in the Licensee's absence, ~~shall of a licensed grant holder must~~ be registered with the Shellfish Constable.
- b) Licensees are responsible for the actions of all individuals working on the Licensee's ~~Licenseemployees or otherwise affiliated persons while they are working on the grant.~~

5.3 Limit on Size of License Grant

No Licensee shall ~~hold a license, or~~ have use of, more than three (3) acres, regardless of the number of Licenses a person operates under, in total.

- a) ~~Each person named on a license as a licensee shall be charged with the total acreage covered by the license.~~

5.4 Moratorium License Granting Suspension Term

- a) ~~If, in its sole judgment, T~~he Licensing Authority may suspend ~~determines that~~ the granting of additional licenses upon a determination that the granting of additional licenses will not further the purposes of these Regulations (“LGST”), ~~it may declare a moratorium on the granting of licenses at any time.~~
- b) The Licensing ~~a~~Authority may deny all applications for new Licenses that are received ~~or pending~~ after a LGST moratorium has been declared.
- c) The Licensing Authority ~~However, it~~ may grant an applications to transfer, amend, or renew a licenses during a LGST moratorium, if the applications otherwise complies with meet the other criteria in these Regulations.
- d) Any application approved dDuring a LGST moratorium, ~~pending or new applications for an aquaculture license shall will~~ be added to the Aquaculture Licensing Prequalified List of Applicants (the “Prequalified List”).
- e) ~~During a moratorium, license transfers shall be permitted with the approval of the Licensing Authority. In such a case, the transfer to the new individual will be treated as an application for a new license, except that the new licensee will not have to be the next individual on the prequalified list and the moratorium shall not apply.~~
- f) ~~During a moratorium, If an existing L~~icense becomes available during a LGST, ~~as the result of being involuntarily revoked or abandoned, the the Licensing Authority may make such license available to a members of the P~~requalified ~~list Lists~~ shall be given the opportunity to apply for that license, in order, consistent with their location on the prequalified list.

5.5 Prequalified List

- a) The Shellfish Advisory Committee ~~shall will~~ manage the Prequalified List.
- b) The ~~licensing authority shall keep a p~~Prequalified List shall include each licensed applicant ~~ist of all applications denied during a moratorium, and shall be arranged in chronological order with the oldest of approved license being placed at the top of the Prequalification List while the most recent having the first opportunity to receive a~~

license and the most recent approved license being placed on the bottom of the Prequalification List~~their prequalification date.~~

- c) In order to remain maintain a spot on the Pprequalified Llist, an approved applicant shall pay a twenty-five dollar (\$25.00) annual fee on or before shall be due January 15th to the Shellfish Advisory Committee.
- d) It is the applicant's responsibility to provide the Licensing Authority with current update contact information.
- e) The Shellfish Advisory Committee shall inform the public of the beginning and end of a LGST. Applicants onnotify individual members of the Pprequalified Hlist shall be offered; the available license in chronological order, if a license becomes available or if the moratorium is lifted and shall permit the applicants on the prequalified list to apply for a new license in writing in accordance chronological order consistent with their position location on the Pprequalified Llist, during and immediately after the lifting of a moratorium.
- f) Any applicant on the Prequalified List shall Members notified of an available license will have ten (10) days from the date of the notification to accept or deny the opportunity to obtain the license. If an Applicant elects not to obtain any available license, the License shall be made available to the next applicant on the Prequalified List.respond.
- g) An Applicants who are on the Pprequalified Llist must renew his/hertheir applications on or before annually in January 15th in order to remain in their position on the prequalified list. Failure to comply with this requirement shall result in Those who do not renew their application by January 15th each year will be removalREMOVED fromFROM THE the Prequalified List. The Prequalified Listlist shall be revised and posted-postedon or before by February 1st of each year online and in the Harbormaster's Office.
- h) No applicant on the pPrequalified Hlist may transfer, bequeath, or otherwise assign his/her position on the pPrequalified Hlist.

6.0 Evidence of Productivity

As described further below, in order to determine minimum levels of investment and production, an annual report must be filed by each licensee throughout the term. In addition, an annual review of each license will be conducted throughout the term of the license.

6.1 Minimum Levels of Investment and Production

- a) During the first, second and third year after the date of issuance of the license a minimum of \$10,000 per acre shall be spent on seed and gear. This shall be verified through receipts of seed and gear purchases.

- b) Any licensed area that is less than one acre shall be prorated.
- c) During the fourth year and every year thereafter, there shall be a minimum production of an average of \$10,000 worth of product per acre, or prorated for a portion thereof, from the practice of aquaculture on the licensed area.
- d) Investment and production shall be demonstrated by the annual grant report, and, if so requested by the licensing authority, copies of transaction receipts or other acceptable documentation.
- e) Failure of the licensee to meet the specified production level for any three (3) consecutive years may result in the forfeit of the aquaculture license and licensed area.
- f) The Licensing Authority shall have the right to waive the minimum production requirements when there is evidence that the failure to meet the minimum standard is due to events beyond the control of the license holder.

6.2 Annual Report

- a) Pursuant to M.G.L. c. 130 §Section 65 every licensee shall submit on oath on or before February 28 in each year to the licensing authority a report of the total number of each kind of shellfish planted, produced, or marketed during the preceding year.
- b) An annual review of each License will be conducted by the Shellfish Constable in order to determine whether minimum levels of investment and production was made of the license during the previous year.
- c) If by the end of the third year, a licensee cannot show substantial use of the licensed area during the preceding year, his/her license will be forfeited, unless the licensee can demonstrate to the Licensing Authority that the licensee has made diligent efforts during the license term and that some substantial progress is imminent.

7.0 Non-Commercial Aquaculture Research and Education Projects

- a) The Licensing Authority may issue a license to an individual or institution proposing to conduct aquaculture research and education projects. Projects shall be environmentally appropriate and in the best interest of the Town of Scituate.
- b) Applicants shall provide a project plan including all aspects of the management and operations of the project to the licensing authority. Applicants shall also describe how the project is environmentally appropriate and in the best interest of the Town.
- c) LicenseesGrantees shall provide yearly reports regarding research and education to the licensing authority.

- d) Non-Commercial [licensee/grantee](#) applicants may request fee exemptions for all fees except for the fee in Section 4.2.b Administrative fee Twenty-five (\$25).

8.0 Rights Granted Under a License

- a) Unless otherwise conditioned, a [License](#) shall authorize the licensee at all times of the year, in or upon the licensed area of the coastal waters of the Commonwealth, tidal flats, or land under coastal water to:
 - 1. Plant and grow shellfish, bottom/off-bottom culture;
 - 2. Place shellfish in or under protective devices affixed directly to the tidal flats or land under coastal waters, within boxes, trays, pens, or nets, in compliance with these Regulations;
 - 3. Harvest and take legal shellfish; and
 - 4. Plant cultch for the purposes of catching shellfish seed; and grow shellfish by means of racks, rafts, or floats.
- b) The [Licensing Authority](#) shall permit, as a condition of the license, such public uses of said waters as are compatible with aquacultural enterprise.

8.1 Designated Aquaculture Float Area and Federal Anchorage

- a) Those granted a license under these Regulations may also apply for a designated aquaculture float, as set forth in M.G.L. [c. Chapter](#) 102 and pursuant to the following terms:
 - 1. The Designated Aquaculture Float area shall be approved by the Harbor Master under [M.G.L. c. Chapter](#) 91 [§Section](#) 10a and shall be for aquaculture related activity only;
 - 2. Float Applicants shall provide proof of a valid aquaculture lease holder with the application;
 - 3. Approved float applicants must obtain an annual mooring permit (or renewal) for the float location;
 - 4. Permitted docks and floats shall be issued based on mooring space availability near the growing area; and
 - 5. The Applicant shall abide by the Scituate Rules and Regulations on Moorings, Permits and Mooring Wait Lists.

- b) Aquaculture Float applicants shall submit a copy of the approved shellfish license/grant to the Harbormaster for approval and then to the Board of Selectmen for filing annually in the month of November, by a filing date set and publicized by the Board of Selectmen annually in October.
- c) As required by M.G.L. ~~c.Chapter~~ 130, ~~§Section~~ 57, the applications shall describe the proposed activity and purpose of the floats, including the species of shellfish to be processed on the float and the float size and design.
- d) After receipt of all applications, the ~~BO~~Board of Selectmen shall hold a public hearing as required by M.G.L. ~~c.Chapter~~ 130, ~~§Sections~~ 57 and 60 to issue individual licenses to the float applicants.
- e) After the grant of float licenses by the ~~BO~~Board of Selectmen, the Town shall post a public notice every November, as described in M.G.L. ~~c.Chapter~~ 130, ~~§§Sections~~ 57, ~~and~~ 60, that includes (at least):
1. The description of the area “Designated Aquaculture Float Area” with (corner coordinates);
 2. The float mooring location assignment and permit number;
3. Docks and floats permitted under ~~M.G.L. c.Chapter~~ 91 ~~§Section~~ 10a ~~shallwill~~ be numbered and locations of docks and floats shall be maintained in a database.
- f) The complete list of ~~A~~applicant’s names, address and corresponding float mooring location assignments, corresponding permit numbers and coordinates.
- g) All float licenses granted by the Harbormaster are issued with the following management conditions, plus any others deemed appropriate by the Board during the licensing process:
1. The float may only be used for growing and sorting seed, processing and holding product, and limited storage of aquaculture gear;
 2. Shellfish moved between the float and shore and vice/versa shall be tagged;
 3. No shell material or debris may be discarded over board at any time;
 4. Licensee shall not use the bottom or tidal flat for any purpose other than the mooring of authorized floats;
 5. Licensee may only handle shellfish on the floats between the hours of ½ hour before sunrise and ½ hour after sunset.

~~h) After the grant of float licenses by the Board of Selectmen, it shall request the Massachusetts Division of Marine Fisheries (“DMF”) certification on the issuance of such a license, which may include a site survey, application and conditions review. DMF will send letters either approving or denying the issuance. DMF may also request additional information or conditions on the license.~~

8.2 Private Property Rights

- a) Licenses granted under these Regulations do not convey property rights. Any entry on or over or use of licenses upon privately owned property requires permission of the property owner. It shall be the licensee’s responsibility to obtain such permission.
- b) Pursuant to M.G.L. Chapter 130, Section 57, a license does not impair the private rights of any person. A license does not authorize injury to private property or invasion of private rights.
- c) The granting of a license is not a determination of title or ownership of a licensed area.

8.3 Compliance with Federal, State and Local Requirements

- a) Approval of a license shall be subject to all federal, state, and local laws and regulations, as in force and as amended from time to time.
- b) Compliance with such laws and regulations is required as a condition of a license.
- c) Failure to comply with applicable federal, state, or local regulations shall be cause to revoke a license.
- d) The licensee is expected to be familiar with applicable laws and regulations.

8.4 Extent of License Rights

- a) A licensee, or his/her legal representative, in accordance with the terms set forth in these Regulations, shall have during the term of a License ~~the exclusive use of the waters, flats, or creeks described in the license (“Exclusive Use Area”), and The exclusive right to take all shellfish therefrom during the time therein specified pursuant to M.G.L. c.Chapter 130, §§Section 57 and 63; provided that this pParagraph shall not be construed to authorize any taking prohibited by law.~~
- b) A licensee may also maintain a float, barge, or boat (hereinafter “float”) for processing purposes within the same growing area of the bay as ~~is~~ the Licensee’s License Area. The location and size of such float shall be determined and authorized annually by the Harbormaster and shall be for the exclusive use of the Licensee conducting permitted tasks related to the culture and harvest of shellfish. When used, the float shall be considered to be part of the licensee’s License Area and shall not be considered “off site.”

- c) Any license, amendment, transfer, or renewal granted under these Regulations is revocable as described herein and does not confer any property rights on the licensee.

8.5 No Right to Sublease

Licenses are granted to and for the exclusive use of a licensee. Assignment or subleasing of the licensed area or portion thereof is prohibited.

8.6 Right to Transfer

- a) ~~Per M.G.L Chapter 130 Section 58, a~~ Any license granted may be transferred with the approval of the Licensing Authority ~~(Board of Selectmen)~~ to any immediate family member defined in 8.7 (b) individual who satisfies all required conditions as defined in the Town of Scituate Shellfish Aquaculture Grant Regulations.
- b) Whether or not so transferred, may, within two years before the expiration of its then current term, be renewed from the expiration of the original term.
- c) ~~The terms of a Transfers are applicable to the original issuance of such~~ license shall, so far as apt, apply to a transfer or a renewal thereof, unless otherwise modified by the Licensing Authority.

8.7 Right to Inherit

- a) Any License issued under the provisions of M.G.L ~~c.~~Chapter 130, ~~§~~Section 57 shall, upon the death of the licensee, continue in full force and effect, ~~subject to the same terms, conditions and regulations imposed by the original licensee,~~ for the remainderbalance of the unexpired term of the License or one year, whichever is longer and may be used by an immediate family member.
- b) For purposes of this section, the term “Immediate Ffamily mMember” shall mean a spouse, son, daughter, mother, father, brother or, and sister of asaid deceased licensee.
- c) Within 90 days of the death of a Licensegrant holder, the deceased family or estate shall apply to the Licensing Authority for a transfer requesting a change of to the license to the name of an immediate family member and shall holder’s name. submit Uupdated insurance information shall also be submitted. To the Licensing Authority.

8.8 Marking of Boundaries

- a) Upon receipt of a The licensee upon receiving his/her license, a licensee shall cause the territory covered thereby to be plainly marked ~~out~~ by monuments, marks, or ranges and shall mark the license boundaries (corners) with stakes.
- b) Each boundary stake shall be is to be a plastic pole with a diameter no greater than 1.5 inch, not higher than eighteen (18”) inches above the surface of the HLicensed Aarea with

~~attached~~ a painted yellow sign, measuring 8" x 10" with two (2") inch block black lettering and bearing the words "LICENSE NO. ____" ~~attached thereto~~. Signage shall be visible at mean low tide only.

- c) ~~Any licensed~~ If rafts or ~~any~~ other floatation devices ~~shall are allowed and used, they will~~ be marked with plastic poles with a sign attached having the same terminology as section 8.8(b) above. Silver reflector paint or tape shall be used on the pole and signage in a manner as to be visible during hours of darkness.
- d) Any such boundary marker shall be subject to the inspection and approval by the Shellfish Constable and Harbormaster. The requirements of this Section shall not conflict with M.G.L. c. Chapter 130 or any requirements from the Army Corps of Engineers. If such conflict exists, the requirements of state or federal law shall prevail over will trump the requirements of this Section.

8.9 Marking and Removal of Equipment

- a) Structures that are used by the licensee on any of the licensed territory shall be marked as follows:
 - 1. If any underwater hard structures or devices are used in the licensed territory, the boundaries of all such hard structures and/or devices shall be plainly marked with twelve (12") inches orange sphere buoys at least at each corner of the acre plot to be attached and anchored with a thirty-six (36") inch length of 1/8 inch tire cord from the top of any hard structure or device.
 - 2. Each boundary corner of the area of hard structures and/or devices shall be marked with two six (6") inch orange sphere buoys as mandated above.
 - 3. Each six (6") inch orange sphere buoy shall be plainly marked in white on two sides with the uniform state waterway marking system (symbol) for: "DANGER!"
 - 4. All gear, tackle, ~~and/or~~ other equipment ~~shall~~ must be indelibly marked with the license number conspicuously placed on each of piece of equipment.
- b) If gear, tackle, or other equipment (collectively "Equipment") leaves the Licensed aArea for any reason and is deposited on the shore, beaches, or flats, whether public or private, the licensee must recover the eEquipment within seven (7) fifteen (15) days from the time of its deposit; provided, that a licensee in so doing does not commit any unreasonable or wanton injury to the property where the equipment is deposited. If the licensee does not recover the eEquipment within seven (7) fifteen (15) days, the Town shall recover the Equipment, at the expense of the licensee.
- c) When a license is terminated for any reason, the licensee shall ~~be required to~~ remove all gear, tackle, or other eEquipment from the Licensed aArea within thirty (30) days of the license termination date. Any and all gear, tackle, or other Equipment not removed

within thirty (30) days may be removed by the Town at the expense of the licensee and shall become the property of the Town if the licensee does not take possession of the equipment immediately after removal and payment of costs to the Town.

- d) No structure or device (except marking buoys, and as otherwise noted in this section) shall protrude more than eighteen (18") inches above the substrate which, for the purposes of these Regulations, refers to the surface or material on or from which an aquaculture organism lives, grows, or obtains its nourishment. All structures shall be readily removable. Shellfish may be rafted only in those areas so specified in a License. Shellfish rafting in areas outside the limit of any raft area shall be prohibited.

8.10 Set- Backs and Buffer Areas

- a) No activity shall occur within fifty (50') feet from beds of eelgrass, widgeon grass, or saltmarsh, and no ~~nor shall~~ such vegetation shall be be damaged or moved.
- b) In addition, a buffer area of fifty (50') feet shall be maintained between Licensed areas. Buffer areas are open to anyone and everyone on an equal basis and shall be maintained for access and retrieval of product and equipment.

9.0 Enforcement

The Shellfish Constable shall administer and enforce these Regulations and all laws relating thereto within their jurisdiction.

9.1 Prohibitions

- a) Pursuant to M.G.L. c.Chapter 130, §Section 68, no person shall dig, take, or carry shellfish or shells between one-half hour after sunset and one-half hour before sunrise, by any method whatever, from any waters, flats, or creeks as to which a license under these Regulations has been granted. A licensee violating this Section shall forfeit his/her License and all shellfish remaining on the licensed area.
- b) All shellfish transferred to the Licensed area shall be obtained from hatcheries or sources certified by the DMF.
- c) All shellfish harvesting shall be by hand without the assistance of power unless the use of mechanical power is approved by the Shellfish Constable and the Division of Marine Fisheries, on a case-by-case basis.

9.2 Revocation of License

- a) Failure of the licensee to comply with the provisions of any applicable rule, regulation, bylaw, statute, or law may result in revocation of the License by the Licensing authority.

- b) ~~The Licensing Authority shall conduct a public hearing prior to the Revocation of any License, shall be preceded by a public hearing of the licensing authority.~~

9.3 Authority to Inspect

- a) The Shellfish Constable ~~may and/or deputies shall have the authority to~~ inspect the Licensed ~~a~~Area at any reasonable time deemed necessary and the inspection may include any and all structures or containers on the Licensed ~~A~~Area.
- b) The Town may take samples of any species held in the Licensed ~~a~~Area for the purpose of determining their species, certifying their source, testing for disease, and in order to assure that the activities taking place are in conformity with the License and all requirements of law.

9.4 Changes to the License

- a) ~~No Proposed~~ changes to the terms of a License and all ~~additional~~s of material investments, ~~which may include~~, but are not limited to, rafts, floats, racks, cages, trays, nets, etc., ~~shall take affect without written approval by the Licensing Authority. must be submitted in writing to the licensing authority for review and approval by the licensing authority.~~
- b) The Licensing ~~A~~authority, ~~in its discretion, shall will~~ determine if the ~~proposed~~ changes are significant, ~~and therefore, require such that~~ further review ~~is warranted~~. If the changes are found to be significant, the Licensed ~~a~~Authority shall hold a public hearing to review the proposed changes, public notice of which shall be given as described in these Regulations.
- c) A significant change shall include, but not be limited to, any amendment of a license which may affect the navigable waters; which changes the form of aquaculture or the category of aquaculture performed by the licensee; or which may impact the marine environment.
- d) Upon review of the proposed changes, the Licensed ~~a~~Authority may approve or deny the proposed changes, such changes are subject to certification by the Division of Marine Fisheries ~~prior~~ to taking effect.

9.5 Town Record Requirements for Licenses Granted

- a) The Shellfish Advisory Committee, ~~at the direction of the licensing authority,~~ shall keep plans showing all Licensed ~~A~~Areas, ~~and in a book devoted to that purpose only,~~ a record of each license granted and transfers or renewals thereof, ~~which shall include~~ the name and address of ~~all the licensee licenses and/or transferees~~, the dates of granting the ~~license~~, transfer, renewal, and expiration thereof, and a copy of the description of ~~the~~ the Licensed ~~A~~Area, ~~in a book devoted solely to such records.~~

- b) Each license, transfer, or renewal thereof, shall forthwith after the granting thereof be transmitted by the Licensing Authority to the Shellfish Advisory Committee, who shall enter the name in a book kept especially therefor in his/her office.
- c) The records shall be open for public inspection at all reasonable times.

10.0 Liability of the Town

The Licensee shall not hold the Town liable for any damages or injury to the Licensed Area, including damages or injury due to any dredging or improvements done by or on behalf of the Town. If at any time it becomes necessary for the Town to dredge and/or otherwise accomplish maintenance by dredging on or within the vicinity of the Licensed aArea to improve or maintain channels for navigation, or for any other public purpose, a licensee agrees not to obstruct the dredging plans and operations. A-The Town shall provide a licensee ~~will have~~ ninety (90) days' notice prior to commencement of any dredging operation. Before, during, and after dredging operations are completed and if, in the opinion of a licensee, the Shellfish Constable, and the State mMarine bBiologist, the bottom conditions are considered temporarily unsuitable for planting or maintaining shellfish, immediate and temporary permission for relocation of a licensee's stock shall be reviewed by the Licensing Authority. If shellfish need to be relocated under these conditions, they shall be relocated at the expense of the licensee and subject to the issuance of a permit by the Division of Marine Fisheries.

11.0 Insurance Requirements

The Licensee shall hold at least one million (\$1,000,000) in liability insurance per licensegrant acre and the licensee shall name the Town of ScituateOWN OF SCITUATE, with an address of 600 Chief Justice Cushing Highway, Scituate, MA 02066 as an additional insured.

12.0 Fines

a) Pursuant to M.G.L. c.Chapter 130, §Section 66, the penalty for destroying or interfering with the boundaries of a shellfish License ~~or grant~~ is a twenty dollar (\$20.00) fine. for each offense and/or the possible revocation of the license or both.

a)b) _____

c) Pursuant to M.G.L. c.Chapter 130, §Section 67, the penalty for taking shellfish from a licensee's Shellfish Areagrounds without permission or authority to do so is a twenty dollar (\$20.00) fine and/or one-month imprisonment for the first offense, or a fifty dollar (\$50.00) fine and/or six month imprisonment for the second offense for each offense and/or the possible revocation of the license or both.

b)d) _____.

e)e) _____ The penalty for any other violation of these Regulations shall be a fine not less than twenty-five dollars (\$25.00), nor more than two hundred dollars (\$200.00) for each offense and/or the possible revocation of the license or both.

Adopted by the Town of Scituate Shellfish Advisory Committee:

XXXX

Adopted by the Waterways Committee:

XXXX

Adopted by the Town of Scituate Board of Selectmen:

XXXX

DRAFT